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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,109	08/21/2003	Douglas M. Goumas	DMG-101	6679

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Lipsitz & McAllister, LLC  
755 MAIN STREET  
MONROE, CT 06468

EXAMINER
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DAHBOUR, FADI H

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Applicati n No.

10/645,109

Applicant(s)

GOUMAS

Examiner

Fadi H. Dahbour

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 22 is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-21 and 23-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

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## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. The Examiner acknowledges Applicant's submission of the amendment filed on 11/12/04. Claims 1-27 are now pending.

***New Matter Rejection***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-8, 10-21, 23-27 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, applicant's specification does not mention the word "fixed".

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3, 5-6, 8, 12, 14-16, 18-19, 21, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Katzin.

Katzin discloses a preformed metacarpal fracture brace (Figs.1-14), comprising a one-piece semi-rigid molded outer shell contoured to conform to an outside portion of a wrist and hand of a wearer (10 of Figs.7 & 10), the outer shell comprising a proximal

section adapted to immobilize the wrist in an extension position (see left-half of Figs.7 & 10), and a distal section extending at an angle to the proximal section and adapted to immobilize at least the fourth and fifth metacarpals of the hand in a functional position at the angle (see right-half of Figs.7 & 10), a soft inner shell applied to an inside portion of the outer shell (60, 58, 62 of Fig.6), a plurality of straps connected to the outer shell adapted to secure the brace onto the wearer (26a, 26b, 26c of Figs.7 & 10), wherein the outer shell has a C-shaped cross-section (Figs.7 & 10), wherein the outer shell extends in a longitudinal direction from above the wearer's wrist to the tips of the wearer's fingers (Figs.7 & 10), wherein the outer shell is open-ended along its width at a distal end and at a proximal end (Figs.7 & 10), wherein the angle comprises an angle in the range between 80 to 90 degrees (see "fitted to a particular patient by bending in both longitudinal and transverse directions" in lines 38-39 of col.4), wherein the straps comprise Velcro straps (see "hook and loop fasteners" in lines 50-51 of col.2), wherein a first strap secures the brace above the wrist of the wearer and a second strap secures the brace around a palm portion of the wearer's hand and a third strap secures the brace around fingers of the wearer (26a, 26b, 26c of Figs.7 & 10).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katzin in view of Grim et al (U.S.5,058,576).

Katzin, as described above, discloses all the features claimed except malleable plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have malleable plastic, in the device of Katzin, because Grim teaches that it is possible to use plastic instead of metal (see "metals...plastics" in line 37 of column 5 of Grim).

8. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Katzin.

Katzin, as described above, discloses all the features claimed except applying after a predetermined initial healing period during which the hand and wrist are immobilized using a cast. It would have been obvious to one having ordinary skill in the art at the time the invention was made, to apply after a predetermined initial healing period during which the hand and wrist are immobilized using a cast, because it is dependent upon the particular needs of the patient.

#### ***Allowable Subject Matter***

9. Claims 4, 10-11, 13, 17, 23-24, 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and if rewritten to overcome the new matter rejection(s) under 35 U.S.C. 112, first paragraph, set forth in this Office action.

10. Claims 9 and 22 are allowed.

#### ***Conclusion***

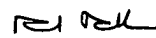
11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadi H. Dahbour whose telephone number is 571-272-4792. The examiner can normally be reached on M-F, 9am-5:30pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
1/18/05

Fadi H. Dahbour  
Examiner  
Art Unit 3743